(6) *Color additive* means any substance that meets the definition in section 201(t) of the Act and which is subject to premarketing approval under section 721 of the Act.

(7) *Due diligence petition* means a petition submitted under § 60.30(a).

(8) *FDA* means the Food and Drug Administration.

(9) *Food additive* means any substance that meets the definition in section 201(s) of the Act and which is subject to premarketing approval under section 409 of the Act.

(10) *Human drug product* means the active ingredient of a new drug or human biologic product (as those terms are used in the Act and the Public Health Service Act), including any salt or ester of the active ingredient, as a single entity or in combination with another active ingredient.

(11) *Marketing applicant* means any person who submits an application for premarketing approval by FDA under:

(i) Section 505(b) of the Act or section 351 of the Public Health Service Act (human drug products);

(ii) Section 515 of the Act (medical devices);

(iii) Section 409 or 721 of the Act (food and color additives); or

(iv) Section 512 of the Act (animal drug products).

(12) *Marketing application* means an application for:

(i) Human drug products submitted under section 505(b) of the Act or section 351 of the Public Health Service Act;

(ii) Medical devices submitted under section 515 of the Act;

(iii) Food and color additives submitted under section 409 or 721 of the Act; or

(iv) Animal drug products submitted under section 512 of the Act.

(13) *Medical device* means any article that meets the definition in section 201(h) of the Act and which is subject to premarketing approval under section 515 of the Act.

(14) *Product* means a human drug product, animal drug product, medical device, food additive, or color additive, as those terms are defined in this section.

(15) *PTO* means the United States Patent and Trademark Office.

(16) *Animal drug product* means the active ingredient of a new animal drug (as that term is used in the Act) that is not primarily manufactured using recombinant deoxyribonucleic acid (DNA), recombinant ribonucleic acid (RNA), hybridoma technology, or other processes involving site-specific genetic manipulation techniques, including any salt or ester of the active ingredient, as a single entity or in combination with another active ingredient.

[53 FR 7305, Mar. 7, 1988, as amended at 57 FR 56261, Nov. 27, 1992; 64 FR 399, Jan. 5, 1999]

Subpart B—Eligibility Assistance

§ 60.10 FDA assistance on eligibility.

(a) Upon written request from the U.S. Patent and Trademark Office, FDA will assist the U.S. Patent and Trademark Office in determining whether a patent related to a product is eligible for patent term restoration as follows:

(1) Verifying whether the product was subject to a regulatory review period before its commercial marketing or use;

(2) For human drug products, food additives, color additives, and medical devices, determining whether the permission for commercial marketing or use of the product after the regulatory review period is the first permitted commercial marketing or use of the product either:

(i) Under the provision of law under which the regulatory review period occurred; or

(ii) Under the process claimed in the patent when the patent claims a method of manufacturing the product that primarily uses recombinant deoxyribonucleic acid (DNA) technology in the manufacture of the product;

(3) For animal drug products, determining whether the permission for commercial marketing or use of the product after the regulatory review period:

(i) Is the first permitted commercial marketing or use of the product; or

(ii) Is the first permitted commercial marketing or use of the product for administration to a food-producing animal, whichever is applicable, under the

provision of law under which the regulatory review period occurred;

(4) Informing the U.S. Patent and Trademark Office whether the patent term restoration application was submitted within 60 days after the product was approved for marketing or use, or, if the product is an animal drug approved for use in a food-producing animal, verifying whether the application was filed within 60 days of the first approval for marketing or use in a food-producing animal; and

(5) Providing the U.S. Patent and Trademark Office with any other information relevant to the U.S. Patent and Trademark Office's determination of whether a patent related to a product is eligible for patent term restoration.

(b) FDA will notify the U.S. Patent and Trademark Office of its findings in writing, send a copy of this notification to the applicant, and file a copy of the notification in the docket established for the application in FDA's Division of Dockets Management (HFA–305), 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

[57 FR 56261, Nov. 27, 1992]

Subpart C—Regulatory Review Period Determinations

§ 60.20 FDA action on regulatory review period determinations.

(a) FDA will consult its records and experts to verify the dates contained in the application and to determine the length of the product's regulatory review period under § 60.22. The application shall contain information relevant to the determination of the regulatory review period as stated in the ''Guidelines for Extension of Patent Term Under 35 U.S.C. 156'' published on October 9, 1984, in PTO's *Official Gazette* and as required by 37 CFR chapter I.

(b) After determining the length of the regulatory review period, FDA will notify PTO in writing of its determination, send a copy of this determination to the applicant, and file a copy of the determination in the docket established for the application in FDA's Division of Dockets Management (HFA–305), 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

(c) FDA will also publish the regulatory review period determination in the FEDERAL REGISTER. The notice will include the following:

(1) The name of the applicant;

(2) The trade name and generic name (if applicable) of the product;

(3) The number of the patent for which an extension of the term is sought;

(4) The approved indications or uses for the product;

(5) An explanation of any discrepancies between the dates in the application and FDA records;

(6) Where appropriate, an explanation that FDA has no record in which to review the date(s) contained in the application; and

(7) The regulatory review period determination, including a statement of the length of the testing and approval phases and the dates used in calculating each phase.

[53 FR 7305, Mar. 7, 1988, as amended at 59 FR 14364, Mar. 28, 1994]

§ 60.22 Regulatory review period determinations.

In determining a product's regulatory review period, which consists of the sum of the lengths of a testing phase and an approval phase, FDA will review the information in each application using the following definitions of the testing phase and the approval phase for that class of products.

(a) For human drugs:

(1) The testing phase begins on the date an exemption under section 505(i) of the Act becomes effective (or the date an exemption under former section 507(d) of the Act became effective) for the approved human drug product and ends on the date a marketing application under section 351 of the Public Health Service Act or section 505 of the act is initially submitted to FDA (or was initially submitted to FDA under former section 507 of the Act), and

(2) The approval phase begins on the date a marketing application under section 351 of the Public Health Service Act or section 505(b) of the Act is initially submitted to FDA (or was initially submitted under former section 507 of the Act) and ends on the date the application is approved.